

Section 4.11

Permits and Clearances

This section discusses the permits and clearances that would be required to construct any proposed build alternative. The information presented in this section represents an update of the information presented in Section 4.11 of the Final EIS. Updated information on the federal, state, and local permits and clearances that have been obtained to date for Alternative D (Final EIS Preferred Alternative) is also presented herein and summarized in Table 4.11-1 at the end of this section. The terms and conditions for the permits and clearances obtained for Alternative D will be reassessed by the responsible agencies after the federal lead agencies have determined which, if any, of the build alternatives presented in the Supplemental EIS will be approved for implementation by UDOT.

4.11.1 Approach and Methodology

4.11.1.1 Changes since June 2000 Final EIS

Federal, state, and local regulatory requirements specific to resource areas that would be affected by proposed build alternatives were reviewed to determine whether they had been updated or changed since publication of the Final EIS. In addition, permits and clearances obtained to date for Alternative D were reviewed to determine their current status.

4.11.1.2 Changes since Draft Supplemental EIS

Since the Draft Supplemental EIS was published in December 2004, Table 4.11-1 and Section 4.11.2 have been updated to indicate the current permit status. Several permits that were previously obtained for Legacy Parkway have expired.

4.11.2 Affected Environment

Table 4.11-1 at the end of this section provides updated information on the status of permits and clearances obtained to date for Alternative D (Final EIS Preferred Alternative). As stated above, the types of permits and clearances listed in Table 4.11-1 and in the following text would apply to all build alternatives; however, the terms and conditions of these permits could change based on which, if any, of the alternatives presented in the Supplemental EIS is selected by the federal lead agencies for implementation. There have been no regulatory changes since 2000 that change the type of permits and clearances addressed in the Final EIS.

4.11.2.1 Federal Permits and Clearances

Section 404, Clean Water Act, Individual Permit (Corps)

As stated in the Final EIS, the Corps requires project applicants to obtain a Clean Water Act (CWA) Section 404 permit if a proposed action would result in the discharge of dredged or fill material into waters of the United States, including wetlands. All the build alternatives presented in the Final EIS and the Supplemental EIS would require placement of fill material in waters of the United States (see Section 4.12, *Wetlands*, and Section 4.13, *Wildlife*). As a result, authorization would have to be obtained from the Corps prior to implementation of any build alternative.

On January 9, 2001, the Corps issued a CWA Section 404 permit for Alternative D. Based on the narrower right-of-way associated with Alternative E, UDOT submitted a request for a permit modification to the Corps in November 2004. The public hearing for the permit modification was held in January 2005, concurrent with the release of the Draft Supplemental EIS. The Corps will reevaluate the decision to modify the CWA Section 404 permit based on information presented in the Supplemental EIS. The permit decision will be presented in the Record of Decision (ROD) at the completion of the Supplemental EIS process.

Section 401, Clean Water Act, Water Quality Certification (UDEQ)

Section 401 of the CWA requires federal agencies to ensure that their proposed actions (e.g., issuance of a permit) do not violate state water quality standards. The Section 404 permit is an action that requires evaluation by Utah Department of Environmental Quality (UDEQ), Division of Water Quality, for water quality certification.

All the build alternatives presented in the Final EIS and the Supplemental EIS would require placement of fill material in waters of the United States, as described above. As a result, water quality certification pursuant to Section 401 of the CWA would have to be obtained from UDEQ.

A CWA Section 401 permit was issued by UDEQ for Alternative D on December 5, 2000. The permit does not have an expiration date, but UDEQ will reevaluate it prior to or concurrent with the Corps' permit decision.

Section 402, Clean Water Act, Utah Pollution Discharge Elimination System Permit (UDEQ)

Section 402 of the CWA regulates discharges of pollutants to surface waters. Construction projects that disturb 0.4 or more ha (1 or more ac) of land must be covered under the statewide Utah Pollution Discharge Elimination System (UPDES) stormwater permit. All the build alternatives presented in the Final EIS and the Supplemental EIS would disturb more than 0.4 ha (1 ac) of land and would require coverage under the UPDES stormwater permit.

UPDES permits are also required for industrial discharges associated with the operation of a facility. However, because highways are not considered industrial discharges, a UPDES permit would not be required for operation of Legacy Parkway.

The UPDES stormwater permit for Legacy Parkway has two main sections: the UPDES general construction stormwater permit and the UPDES general permit for construction dewatering or hydrostatic testing. The UPDES general construction stormwater permit, which covers actual construction activities,

was granted on July 1, 2001, and expired December 31, 2004. UDEQ has extended coverage under this permit for continued maintenance and reporting of stormwater controls within previously disturbed portions of the Alternative D (Final EIS Preferred Alternative) right-of-way.

The UPDES general permit for construction dewatering or hydrostatic testing, which covers construction dewatering or hydrostatic testing, was granted on June 29, 2003, and expired December 31, 2003. UDOT received a 6-year extension with UDEQ for the construction dewatering and hydrostatic testing permit that expires December 31, 2009. Alternative D is covered under these extended permits.

Of note, UDEQ will require that UDOT implement best management practices (BMPs), including construction of vegetative strips and swales, to remove total suspended solids (TSS) prior to issuance of the General Construction Storm Water Permit for the proposed Legacy Parkway project. In addition, UDEQ will require that UDOT specify BMPs for the long term maintenance of stormwater treatment facilities in the Phase II MS4 General Storm Water Permit for UDOT.

Approval of Addition or Modification of Access Points (FHWA)

As described in the Final EIS, changing access points to the interstate highway system requires approval from FHWA. All the build alternatives presented in both the Final EIS and the Supplemental EIS would require access to I-215 in North Salt Lake and to I-15 and US-89 in either Kaysville or Farmington.

The technical criteria in the interchange design/justification report (IJR) for Alternative D was approved by FHWA in August 1999 (Utah Department of Transportation 1999), with final approval of the IJR provided with publication of the ROD. UDOT is updating the IJR for FHWA review in conjunction with preparation of this Supplemental EIS. FHWA is reevaluating the decision to allow these access points, as described in the revised IJR, concurrently with the Supplemental EIS process.

Endangered Species Act (USFWS) Authorization

Section 7 of the federal Endangered Species Act (ESA) requires that federal agencies ensure that their actions neither jeopardize the continued existence of species listed as endangered or threatened nor result in destruction or adverse modification of the critical habitat of these species. Federal agencies must consult with the U.S. Fish and Wildlife Service (USFWS) if an action would result in “take” of a listed species, where *take* is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect...[an individual of a species]” (16 USC 1531 et seq.). The consultation can result in an incidental take statement establishing conditions under which a project that results in take may go forward.

All the build alternatives in the Final EIS and the Supplemental EIS could affect bald eagles, a species listed under the ESA as threatened (see Section 4.15, *Threatened and Endangered Species*). During the Final EIS process, the federal lead agencies initiated formal consultation with USFWS to assess the potential for take of bald eagles resulting from implementation of Alternative D. This consultation resulted in a biological opinion and incidental take statement issued by USFWS in February 1999 (U.S. Fish and Wildlife Service 1999a), which allowed the project to proceed under certain terms and conditions. The incidental take statement and biological opinion also cover the regulatory requirements of the Migratory Bird Treaty Act and the Bald Eagle Protection Act, as required under each of those federal statutes.

FHWA received a letter from USFWS on December 3, 2003, stating that the terms and conditions of the biological opinion are still in effect. The biological opinion may be reevaluated during or after the Supplemental EIS process.

Section 106, National Historic Preservation Act Consultation (Utah SHPO & ACHP)

As stated in the Final EIS, Section 106 of the National Historic Preservation Act (NHPA) requires that historical and archeological resources eligible for listing on the National Register of Historic Places (NRHP) be considered during planning and implementation of federal projects. Specifically, the Section 106 process requires that the federal lead agencies consult with the Utah State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Utah Division of Indian Affairs to determine a proposed project's effects on properties listed or eligible for listing on the NRHP, as well as ways to minimize and mitigate adverse impacts on such properties.

All the build alternatives presented in the Final EIS and the Supplemental EIS would require consultation with the Utah SHPO prior to implementation (see Section 4.16, *Historic and Archaeological Resources*). Consultation with the Utah SHPO on Alternative D was completed prior to publication of the Final EIS. A Memorandum of Agreement (MOA) specific to NRHP-eligible resources affected by the proposed action was signed on August 1, 2000. A revised MOA has been updated, was circulated to signatories and consulting parties for comment, and has been executed (see Appendix A).

Blanket Certificate (FERC)

As stated in the Final EIS, changes in the connections of major natural gas lines require notification of and approval by the Federal Energy Regulatory Commission (FERC). All the build alternatives in the Final EIS and the Supplemental EIS could affect one natural gas pipeline company under the jurisdiction of FERC: the Kern River Gas Transmission Company. If a blanket certification is required, it will be requested prior to starting construction activities.

Material Site Right-of-Way Permit (BLM)

As stated in the Final EIS, use of Bureau of Land Management (BLM) mineral reservations (e.g., gravel for fill material) requires a material site right-of-way permit from BLM. The project applicant has not determined whether mineral reservations would be used to construct any build alternative presented in the Final EIS or the Supplemental EIS. The necessity for this permit will be determined after the Supplemental EIS process has been completed. None of the construction work completed in 2001 required use of BLM mineral reservations.

4.11.2.2 State Permits and Clearances

Utah State Stream Alteration Permit (UDNR)

The Utah Department of Natural Resource (UDNR), Division of Water Rights, requires project applicants to obtain a stream alteration permit if a stream crossing would result in a major stream alteration or modification. As described in the Final EIS, stream alteration permit applications are typically combined with the Corps Section 404 permit application to facilitate a streamlined permitting process.

All the build alternatives in the Final EIS and the Supplemental EIS would require one or more stream crossings, which would trigger the need for the project applicant to obtain a stream alteration permit from UDNR. Stream alteration permits granted in 2001 for crossings of Salt Lake Canal, Farmington Creek, Steed Creek, Davis Creek, and Shepard Creek as a result of Alternative D (Final EIS Preferred

Alternative) alignment have expired. UDOT will submit revised stream alteration permits, as appropriate, after the Supplemental EIS process has been completed.

Air Quality Approval Order (UDEQ)

An air quality approval order is required to build, own, or operate a facility that pollutes the air. To obtain an air quality approval order, a notice of intent (NOI) must be submitted to UDEQ, Division of Air Quality, describing construction activities and emissions that would be associated with operating equipment. As stated in the Final EIS, the permit application must include provisions for controlling dust and emission sources.

All the build alternatives in the Final EIS and the Supplemental EIS would generate fugitive dust and emissions and would require an air quality approval order from UDEQ. The air quality approval order for Alternative D was granted on January 25, 2001; this approval does not have an expiration date. UDEQ may have to reevaluate this permit after the Supplemental EIS process has been completed.

Water Rights (UDNR)

As stated in the Final EIS, an application must be made to UDNR, Division of Water Rights, if an existing groundwater well (i.e., point of diversion) within the right-of-way of a build alternative needs to be relocated. In addition, if the rights to a well were purchased by UDOT, the deed record at UDNR would have to be updated.

All the build alternatives in the Final EIS and the Supplemental EIS, as well construction of the Legacy Nature Preserve, could require relocation of points of diversion, based on the right-of-way that is purchased to support construction of the proposed highway and preserve. UDOT would have to apply to UDNR to change the location of any points of diversion and to change the deed record for purchased groundwater wells.

UDOT has purchased the majority of the right-of-way, including the associated water rights, necessary for construction of Alternative D (Final EIS Preferred Alternative) and the Legacy Nature Preserve (West pers. comm. [d and c]). To date, no changes in the location of points of diversion have been proposed. Applications to change the location of points of diversion will be made to UDNR, as appropriate, after the Supplemental EIS process has been completed. Some additional groundwater and surface water rights may be acquired to provide water to the Legacy Nature Preserve.

Certificate of Registration (UDNR)

As stated in the Final EIS, a certificate of registration is required by UDNR, Division of Wildlife Resources, if a proposed action could affect raptor nests. All the build alternatives evaluated in the Final EIS and the Supplemental EIS could affect raptor nests (see Section 4.13, *Wildlife*). Therefore, UDOT would have to obtain a certificate of registration from UDNR prior to implementing any proposed build alternatives.

A certification of registration must be renewed annually; it was last renewed for Alternative D on January 1, 2004, and expired December 31, 2004. UDOT will be required to submit a new certificate of registration to UDNR after the Supplemental EIS process has been completed and prior to construction activities.

Approval of Remediation Work Plan (UDEQ & EPA)

As stated in the Final EIS, a remediation work plan must be submitted and approved by UDEQ or the U.S. Environmental Protection Agency (EPA) if construction activities would occur on existing hazardous waste sites. All the build alternatives in the Final EIS and the Supplemental EIS would require construction of components on existing hazardous waste sites (see Section 4.17, *Hazardous Waste Sites*). Therefore, a remediation work plan specifying clean-up levels and protective measures for construction personnel would have to be submitted to UDEQ and/or EPA for approval.

An MOA between UDEQ and UDOT was signed in 2000 (Appendix A). The applicability of the remediation plan and required approvals will be determined after the Supplemental EIS process has been completed.

4.11.2.3 Local Permits & Clearances

Floodplain Development Permit (Local Jurisdiction)

As described in the Final EIS, all the proposed build alternatives in the Final EIS and the Supplemental EIS would require construction of components within the Federal Emergency Management Agency (FEMA) 100-year floodplain boundary, including placement of highway fill and drainage structures at stream crossings (see Section 4.14, *Floodplains*). As a result, floodplain development permits would have to be obtained from local jurisdictions in the area for work within the 100-year floodplain.

No floodplain development permits have been obtained for Alternative D (Final EIS Preferred Alternative) (Adams pers. comm.). The necessity for these permits will be determined after the Supplemental EIS process has been completed.

Development Permit for Critical Flood Areas (Davis County)

As stated in the Final EIS, Davis County requires permits for development in “critical flood areas,” where *critical flood areas* are defined as areas within 30 m (100 ft) of certain creeks and channels. All the build alternatives in the Final EIS and the Supplemental EIS would cross one or more of these designated critical flood areas, which would require a development permit from Davis County.

No development permits for critical flood areas have been obtained for Alternative D. The necessity for these permits will be determined after the Supplemental EIS process has been completed.

Construction-Related Permits and Clearances (Various Agencies)

All the build alternatives identified in the Final EIS and the Supplemental EIS could require construction-related permits and clearances for activities occurring outside the right-of-way, such as staging of construction areas, borrow areas, or concrete batch plant sites.

Permits for a crusher and for a concrete batch plant associated with implementation of Alternative D were granted on September 20, 2001 by UDEQ, Division of Air Quality. The necessity for reevaluating these permits or obtaining additional construction-related permits will be determined after the Supplemental EIS process has been completed.

Table 4.11-1 Required Permits and Clearances

Permit	Granting Agency(ies)	Applicant	When Application Must Be Filed	When Application Is Granted	Applicable Portion of Project	Updated Status (January 2004)
Federal						
Section 404 Individual Permit (Clean Water Act) (Joint application with Stream Alteration Permit)	Corps	UDOT	Concurrent with Final EIS	Concurrent with ROD	Portions of roadway in waters of the U.S.	Granted 1/9/01. UDOT has submitted a request for permit modification to the Corps to reflect narrower right-of-way associated with Alternative E. The Corps will reevaluate the decision to issue and/or modify the Section 404 permit.
Section 401 Water Quality Certification (Clean Water Act)	UDEQ, Division of Water Quality	UDOT	Concurrent with Final EIS	Concurrent with ROD	Required for issuing Section 404 permit to ensure proposed action will comply with state water quality standards	Granted 12/5/2000. No expiration date.
Section 402 (UPDES) Permit (Clean Water Act)	UDEQ, Division of Water Quality	Contractor	Design-build phase	Prior to construction	Stormwater quality during construction phase	UPDES Stormwater General Permit for Construction Activities was granted 7/1/01 and expired 12/31/04. UDEQ has extended coverage under this permit for continued maintenance and reporting of stormwater controls within previously disturbed portions of the Alternative D right-of-way. UPDES Dewatering/Hydrostatic Testing Permit was granted 6/29/03. UDOT received a 6-year extension that expires 12/31/09.
Approval of Addition or Modification of Access Points	FHWA	UDOT	EIS phase	Concurrent with ROD	Interstate access changes	Technical criteria in the interchange design/justification report (IJR) approved 8/99; final approval in ROD. UDOT is updating the IJR for FHWA review in conjunction with preparation of this Supplemental EIS. FHWA will reevaluate the decision to allow these access points, as described in the revised IJR.

Permit	Granting Agency(ies)	Applicant	When Application Must Be Filed	When Application Is Granted	Applicable Portion of Project	Updated Status (January 2004)
Incidental Take Statement (Section 7, Endangered Species Act)	USFWS	FHWA and the Corps	EIS phase	Final EIS	Project affects on migratory birds, eagles, and threatened and endangered species	An incidental take statement was included in the biological opinion for Alternative D, which was issued on 2/11/99. On 12/3/03, USFWS verified that the terms and conditions of the biological opinion were still in effect.
Section 106 Permit (National Historic Preservation Act)	SHPO and ACHP	UDOT	Concurrent with Final EIS	Final EIS	Impacts on historic and archaeological resources	A memorandum of agreement (MOA) between the federal lead agencies, SHPO, and ACHP was signed on 8/1/00. A revised MOA has been updated in September 2005, was circulated to signatories and consulting parties for comment, and has been executed (see Appendix A). The Section 106 permit was issued prior to the release of the Final EIS.
Blanket Certificate (prior notice)	FERC	Gas company	Design-bid-build phase	Prior to construction	Major gas line relocations	Will be obtained as needed.
Material Site Right-of-Way Permit	BLM	UDOT (prepared by contractor)	Prior to use	Prior to use	Required if fill is to be taken from areas with BLM mineral reservations	Will be obtained as needed.
State						
Stream Alteration Permit (Joint application with Section 404 Permit)	UDNR, Division of Water Rights	UDOT	Concurrent with Final EIS	Concurrent with ROD	Structures at stream crossings	Stream alteration permits granted in 2001 for Salt Lake Canal, Farmington Creek, Steed Creek, Davis Creek, and Shepard Creek have expired. UDOT will submit revised stream alteration permits, as appropriate, after the Supplemental EIS process has been completed.
Air Quality Approval Order	UDEQ Division of Air Quality	Contractor	Design-build phase	Prior to construction	Air quality during construction phase (emissions from equipment)	Granted 1/25/01. No expiration date. An Emissions Control Plan (EMC) was prepared for this permit.

Permit	Granting Agency(ies)	Applicant	When Application Must Be Filed	When Application Is Granted	Applicable Portion of Project	Updated Status (January 2004)
Water Rights (change deed record or apply for change in point of diversion)	UDNR, Division of Water Rights	UDOT	Right-of-way acquisition phase	Right-of-way acquisition phase	Changes in point of diversion or in use associated with wells in the right-of-way or water required for wetland mitigation	UDOT has purchased water rights along with property for right-of-way. Changes in points of diversion will be coordinated with UDNR as necessary.
Certificate of Registration	UDNR, Division of Wildlife Resources	Contractor	Design-bid-build phase	Prior to construction	Impacts on raptor nests	A certification of registration must be renewed annually; it was last renewed for Alternative D on January 1, 2004, and expired December 31, 2004. UDOT will be required to submit a new certificate of registration to UDNR after the Supplemental EIS process has been completed and prior to construction activities.
Approval of Remediation Work Plan	UDEQ or EPA	UDOT	EIS and design-build phases	Prior to construction	Hazardous waste, CERCLA, and NPL sites	An MOA was signed between UDEQ and UDOT in 2000. Specific permits will be submitted on a case-by-case basis.
Local						
Floodplain Development Permit (local floodplain coordinator)	Davis County, North Salt Lake, Woods Cross, West Bountiful, Centerville, Farmington	UDOT (prepared by contractor)	Design-bid-build phase	Design-bid-build phase	Portions of roadway or structures in FEMA floodplain for creeks or Great Salt Lake	Will be obtained on a case-by-case basis prior to construction.
Development Permit for Critical Flood Areas	Davis County	UDOT (prepared by contractor)	Design-bid-build phase	Design-bid-build phase	Portions of roadway or structures within 30 m (100 ft) of certain channels	Will be obtained on a case-by-case basis prior to construction.

Permit	Granting Agency(ies)	Applicant	When Application Must Be Filed	When Application Is Granted	Applicable Portion of Project	Updated Status (January 2004)
Off-site Construction-related permits	Various	Contractor	Contractor	Prior to construction	Impacts associated with offsite activities such as construction staging, borrow areas, batch plant sites, etc.	Permits for a crusher and a concrete batch plant were both granted on 9/20/01 by UDEQ, Division of Air Quality. Other permits will be obtained as needed.

Notes:

All the listed permits would be required for construction of Legacy Parkway under all proposed build alternatives and options. However, the terms and conditions listed in this table for permits obtained to date are specifically for the Alternative D alignment. These terms and conditions will be reassessed by the responsible agencies after the federal lead agencies have determined which, if any, of the build alternatives presented in the Supplemental EIS will be approved for implementation by UDOT.

ACHP = Advisory Council on Historic Preservation
 BLM = Bureau of Land Management
 CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act
 Corps = U.S. Army Corps of Engineers
 Draft EIS = Draft Environmental Impact Statement
 EIS = Environmental Impact Statement
 EPA = U.S. Environmental Protection Agency

FEMA = Federal Emergency Management Agency
 FERC = Federal Energy Regulatory Commission
 FHWA = Federal Highway Administration
 Final EIS = Final Environmental Impact Statement
 NPL = National Priorities List
 NRHP = National Register of Historic Places
 ROD = Record of Decision
 SHPO = State Historic Preservation Office

Supplemental EIS = Supplemental Environmental Impact Statement
 UDEQ = Utah Department of Environmental Quality
 UDNR = Utah Department of Natural Resources
 UDOT = Utah Department of Transportation
 UDWR = Utah Department of Wildlife Resources
 UPDES = Utah Pollution Discharge Elimination System
 USFWS = U.S. Fish and Wildlife Service